

**ATTACHMENT J-2****SHIP MANAGER (SM) SUBCONTRACT PURCHASING POLICIES**

The purpose of this instruction is to establish policies and procedures for

- 1.0 review and approval of the commercial purchasing system (CPS);
- 2.0 consent to subcontract and review/advance notification of subcontracts; and
- 3.0 MARAD specific subcontract requirements,

in conjunction with Federal Acquisition Regulation (FAR) Part 44, Subcontracting Policies and Procedures.

**1.0 COMMERCIAL PURCHASING SYSTEM (CPS)****1.1 SM DELIVERABLE**

The SM is required to provide its CPS procedures to the PCO within 90 days of NTP. However, the SM is encouraged to provide the deliverable early to enable the review process to be completed in a timely manner.

1.1.1 The CPS will be reviewed in accordance with FAR 44.303. In addition, special attention shall be given to:

1.1.1.1 “Best value” practices. In a “best value” practice, all aspects of ship’s requirements and subcontractor’s capabilities must be considered. In so doing, such enhanced performance factors as increased readiness, shortened repair period or prompt response may outweigh low price alone. The SM procedures shall be well defined and consistently applied and shall follow purchasing practices appropriate for the requirement and the dollar value of the purchase.

1.1.1.2 Methodology for the acquisition of quality products and services at fair and reasonable prices.

1.1.1.3 Minimization of acquisition lead-time and administrative costs of purchasing.

1.1.1.4 Use of self-assessment to support continuous improvements in purchasing.

1.1.1.5 Ability to segregate and track costs (Section 3.2).

1.1.1.6 Maintenance of complete subcontract documentation (Section 3.4).

1.1.1.7 Use of electronic commerce to the maximum extent practicable, for transmission, processing, invoicing and storing data associated with the SM contract.

1.1.1.8 Procedures to identify capable and reliable contractors who have successful past performance records and who can demonstrate a current ability to perform.

1.1.1.9 Procedures for inclusion of appropriate, current flow-down clauses, terms and conditions (Section 3.7).

SMs with CPSs previously approved by other Government agencies shall submit a copy of the documentation of the approval to the PCO in addition to a copy of its procedures for review.

## **1.2 MARAD REVIEW OF CPS**

Review of the CPS may take upwards of 90 days. To ensure consistency in the CPS review and approval process, MARAD has retained the services of the Defense Contract Audit Agency (DCAA) to perform a review of the CPS deliverable. DCAA's review will consist of a combined audit of procurement and accounting procedures and may include an on-site audit at the SM's facility.

If deficiencies are found, the PCO will advise the SM of the deficiencies and recommend the necessary steps the SM must take to gain approval. In accordance with FAR 44.305-2, the SM shall be expected to reply within 15 days with a position regarding the recommendations.

Upon receipt of a favorable review, the PCO will issue notification of approval. Until such time as SM's CPS has been approved by MARAD under the current SM contract, subcontracts are subject to the approvals outlined in Section 2.2.1.2. MARAD CPS approval issued under a prior contract does not apply to the current SM contract.

## **1.3 MAINTENANCE OF CPS**

The SM shall advise the PCO and ACO of any change to its commercial procedures 14 calendar days prior to implementation throughout the performance period of the SMC.

The ACO will monitor the SM purchasing program in accordance with FAR 44.304. ACO review(s) may require on-site attendance at the SM's facility. The SM shall assist the ACO by providing space, administrative support, and access to records/reference documents during these inspections.

In accordance with FAR 44.302, once initial approval has been given, at least every 3 years, the ACO will determine whether a purchasing system review is necessary. The ACO will provide CPS re-certifications. MARAD will conduct annual cost incurred financial audits on SM records utilizing the services of DCAA. If warranted, interim cost-incurred audits will be ordered.

## **1.4 WITHDRAWAL OF CPS APPROVAL**

During the performance period of the SMC, the ACO may lower the advance notification/consent thresholds, if there has been deterioration of the SM CPS or to protect the Government's interests. The ACO will issue a deficiency report to the SM, with a copy to the COCO and PCO. The SM shall immediately conform to the ACO's lower thresholds, and respond to the deficiency report within 15 days. Upon review of the response, the ACO may determine that the lower thresholds should continue or make a decision to withdraw approval of the CPS if it is determined that the SMC is deviating substantially from the approved CPS.

## 2.0 SUBCONTRACT REVIEWS

The SM shall provide subcontracts and documentation for review as follows:

### 2.1 ADVANCE NOTIFICATION

2.1.1 Notification to ACO prior to award, with copy of intended subcontract

Dollar Level	Type of Contract
Any	Other than Fixed Price

2.1.2 The PCO waives the requirement for advance notification of fixed price contracts.

### 2.2 CONSENT

2.2.1 Request for consent to subcontract to ACO

2.2.1.1 **With** Approved CPS

Dollar Level	Type of Contract
>\$125K	Other than Fixed Price
>\$1M	Fixed Price (sole source)
>\$2.5	Fixed Price (competitive)

2.2.1.2 **Without** Approved CPS

Dollar Level	Type of Contract
>\$25K	Other than Fixed Price (except T&M)
>\$50K	Time-and-Materials
> \$100K	Fixed Price

### 2.3 CONSENT TO SUBCONTRACT GUIDELINES

The request for consent to subcontract and supporting documentation shall be submitted to the ACO electronically at least 10 working days prior to intended subcontract award date. The ACO review will include the considerations listed in FAR 44.202-2 as well as consent limitations in 44.203. The SM request shall include all applicable informational elements listed in FAR 52.244-2, Subcontracts, subparagraph (f)(1). Additionally, the consent request shall include:

- A clear analysis of the award decision, including all factors considered
- Copy of proposals received and an abstract of proposals
- Copy of proposed subcontract, including any changes to terms and conditions
- Summary of negotiations, including explanation of variance between proposed and negotiated prices
- Separately priced bonds and insurance, if coverage exceed 3.7.4 requirements

- Specific funding required for the basic subcontract, supplemental growth, options, and projected SM administrative costs
- Milestone schedule

## **2.4 ADDITIONAL REVIEW REQUIREMENTS**

2.4.1 COTR/ACOTR specification reviews are always required regardless of the level of subcontract review.

2.4.2 For any subcontract requiring formal consent, the associated solicitation shall be submitted to the ACO for pre-issuance review electronically at least 10 working days prior to intended issuance date. The solicitation package submitted shall include:

- Solicitation
- Documentation of specification review and approval by the COTR/ACOTR
- Source List
- Detailed estimate
- Basis for determination of liquidated damages, diversion/inter-port differentials, bonding, and insurance, if coverage exceeds 3.7.4 requirements

Thereafter, a copy of all changes or amendments to the solicitation will be provided to the ACO and COTR/ACOTR concurrent with issuance.

2.4.3 Notwithstanding the established review thresholds, the ACO or PCO may request a pre-award review of any complete subcontract, or part thereof (e.g., sole source, non-commercial items).

## **2.5 SPECIAL PROCEDURES FOR MISSION ESSENTIAL AND EMERGENCY REPAIRS**

The SM shall only purchase supplies or services authorized by a TO or TO modification except for mission essential and emergency repairs described below:

### **2.5.1 Mission Essential and Emergency Repairs: Foreign and domestic**

Mission essential repairs are defined as repairs necessary to support a No-Notice Activation, or repairs necessary to prevent or correct unanticipated change in a ship's readiness status to C-3 or C-4.

An emergency is any action that is needed to protect or prevent the loss of life, limb, or property.

### **2.5.2 Mission Essential Repair: General Policy**

The SM shall notify the ACO and COTR/ACOTR as soon as possible, and at a minimum:

- Define the intended work in as much detail as possible.

- Develop an estimate of cost, and an initial not to exceed value.
- Make all attempts possible to obtain competition, given the circumstances.
- Obtain fixed price rates for subcontracted labor (to include straight time and overtime) fully burdened material, mutually acceptable terms and conditions.
- Recommend project start and completion dates.
- Obtain verbal authorization for no-notice activation from personnel designated in Section G.6. Obtain verbal authorization for other mission essential and emergency repairs from the ACO as soon as practical. The ACO will issue a written TO confirming verbal authorizations as soon as possible.

#### 2.5.3 Mission Essential Repairs *Inside* the United States

2.5.3.1 The SM shall comply with the policies of Section 2.5.2 and all appropriate aspects of its approved CPS.

2.5.3.2 All appropriate flow-down clauses shall be used.

#### 2.5.4 Mission Essential Repairs *Outside* the United States

MARAD has been granted authority to waive the flow-down clauses required by FAR Part 44 for all non-commercial subcontract repairs accomplished in foreign ports. There are no mandatory flow-down clauses for foreign commercial item repairs. The SM shall comply with the policies of Section 2.5.2 and all appropriate aspects of its approved CPS as closely as possible, given the circumstances.

#### 2.5.5 Planned Repairs *Outside* the United States

Aside from the waived flow-down clauses of FAR Part 44 noted above, the SM shall conduct planned foreign repairs (e.g. pre-positioned vessels) in accordance with all other aspects of Section 2.5.2 and its approved CPS.

#### 2.5.6 Emergency

The SM is authorized to take whatever action is deemed necessary to protect or prevent the loss of life, limb, or property.

## 1.0 MARAD SPECIFIC SUBCONTRACT REQUIREMENTS

### 3.1 SUBCONTRACT FUNDING

MARAD may obligate funding for subcontracts on the initial TO, or may elect to obligate funding at a later date via TO modification.

The SM is expected to timely execute the approved business plan by soliciting services or supplies “subject to the availability of funds;” however, the SM shall not sign a contract with a subcontractor and shall not incur a legal obligation without a funded TO.

A separate TO will be issued for each subcontract >\$200K, and no other costs will be chargeable to this TO. For subcontracts ≤\$200K, the SM may use funds from multiple TOs. However, the SM must be able to track funding back to those TO’s, and the aggregate amount of subcontracts issued must not exceed the funding on the TOs.

### 3.2 SEGREGATION AND MONITORING OF FUNDS

The SM is responsible for performing the ordered work, by the required delivery date, and within the authorized funding levels for each CLIN of the TO. The SM shall segregate and monitor costs accordingly.

The SM must notify the ACO in writing when 75% of the funds provided on the TO have been expended. SM are cautioned that this notification requirement applies to individual TOs even when multiple TOs are used on a project. Further, the SM shall notify the COTR/ACOTR and ACO at any point that it is determined that the ordered work cannot be accomplished within the required delivery and/or within the authorized funding.

The SM shall provide a tracking report in Excel spreadsheet format upon request. The spreadsheet shall include the following data elements, at a minimum:

- Vessel Name
- SM Contract number
- TO number
- CLIN number
- DSN number
- DSN funded amount
- DSN actual cost
- Short description of services/supplies
- Dollar Amount invoiced
- Subcontractor name
- Subcontractor invoice number
- Subcontract number

### 3.3 SUBCONTRACT SOCIOECONOMIC STATISTICAL REPORTING

All SM regardless of business size, shall report to each ACO by the 5<sup>th</sup> of each month, the total number and total dollar value of subcontracts awarded by the SM for that MARAD region as follows:

<u>Type of Firm (U.S.)</u>	<u>Total # of subcontracts</u>	<u>Total Dollars</u>
SDB Awards	_____	_____
Women Owned SB	_____	_____
SBA 8(a) SB Awards	_____	_____
HUBZone SB Awards	_____	_____

Veteran Owned SB Awards	_____	_____
Total Small Business Awards	_____	_____
Other U.S. Large Business Awards	_____	_____
Total U.S. Subcontract Awards	_____	_____
Total Foreign Subcontract Awards	_____	_____
Total Subcontract Awards	_____	_____

NOTE: Awards to small businesses must be counted in all appropriate categories. For example, an award to a Woman-owned, HUBZone certified firm would be included in both Woman-owned and HUBZone firm figures, but included only one time in Total Small Business Awards. In other words, the Total Small Business Awards will not necessarily equal the sum of all small business awards for the several types of small business firms.

SM certified as a large business shall monitor small and minority business awards in relation to the SM's subcontracting plan goals, accumulate data on all subcontract awards, including those less than \$50,000 and submit a SF-294 (Exhibit I), Subcontracting Report for Individual Contracts and SF-295 (Exhibit II), Summary Subcontract Report to the ACO as required by FAR.

### 3.4 SUBCONTRACT DOCUMENTATION

For purposes of Government auditing, the SM shall establish and maintain an individual file for each subcontract, which may be in electronic format. The file shall be identified with a sequential number for tracking. The file shall be adequately documented to establish the propriety of the transaction and the price paid, and that the SM complied with its commercial purchasing procedures.

The subcontract file shall contain the following, as a minimum:

- Copy of TO(s), with adequate funding authorized for this purpose
- Subcontract, including clearly defined requirements (see Section 3.7)
- Copy of all modifications to the subcontract
- Documentation of competition obtained for purchases >\$2,500 or its absence properly justified
- Documentation of purchase decision, evidencing that the price paid was fair and reasonable and the subcontractor selected represented the best value to the government
- Documentation of negotiations (if conducted), including explanation of variance between proposed and negotiated subcontract prices
- Proper approvals, including SM internal approvals in accordance with commercial procedures and MARAD specification, solicitation, and award approvals
- Documentation of inspection and acceptance
- Documentation of payment in accordance with subcontract terms
- Copy of ACO direction to use Government source of supply (i.e., GSA) or approval of unique terms and conditions (i.e., insurance, bonds, demurrage, progress payment)
- Documentation of rationale for not using directed sources (i.e., fuel)
- Closeout documentation, including final invoice payment marked as such.

Documentation may be maintained in separate files/systems where logical (e.g., documentation of payment in electronic accounting system), provided that the individual subcontract file indicates where the documentation is located and it is available for Government review at the SMGR corporate facility.

### 3.5 SUBCONTRACTOR PAYMENTS

The SM shall encourage vendors to submit invoices promptly. Ideally, the SM should encourage the use of electronic invoicing from the subcontractor to achieve accurate, timely invoices for review and payment. Prompt submission of invoices can be a consideration for best value as it permits obligated funds to be liquidated and excess funds deobligated.

The SM is responsible to verify the validity and accuracy of all subcontractor invoices prior to forwarding them to MARAD for reimbursement. Repeated invoice inconsistencies and errors are a reflection of poor quality control processes and will impact the SM's performance assessment. MARAD will reclaim overpayments directly from SM. The SM shall submit invoices after receipt of supplies/services in accordance with Section G.14.

In the rare situation where commercial practice is for buyer financing of goods or services in excess of the SM stipulated minimum working capital requirements (Section G.10), the SM may request advance payment on a case-by-case basis. For purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. The amount of advance payment requested shall not exceed the amount to be actually paid in advance based on the best terms the SM is able to negotiate with the agent or service provider. SM shall submit their request for advance payment (i.e., payment in advance of receipt of supplies/services) to the ACO via e-mail with a copy to the COTR/ACOTR and FCO, in the following format. The e-mail should be marked as URGENT.

"Request advance payment in the amount of \$\_\_\_\_\_ (insert amount) under Contract \_\_\_\_\_ (insert SM Contract #) / Task Order \_\_\_\_\_ (insert TO #, if applicable), for \_\_\_\_\_ (insert description of services/supplies). Documents to support the amount requested are attached (i.e., detailed estimate, pro forma invoice from the subcontractor). The scheduled pay date is \_\_\_\_\_ (insert date)."

The SM is to include a clear statement or rationale stating why advance payment is necessary and that the value exceeds their contract stipulated minimum working capital.

The ACO will evaluate and approve/disapprove the request via e-mail. If approved, the TO will also indicate that advance payment is authorized. The SM shall submit an invoice, indicating the date when payment is required in the certification statement block on the EIS invoice form and indicating in the description field on the supporting spreadsheet that this is an advance payment. MARAD will endeavor to meet the specified payment date, however, be advised that commercial advance payments are not subject to the interest penalty provisions of the Prompt Payment Act in accordance with FAR 32.9.



### 3.6 SUBCONTRACTOR CLAIMS AND DISPUTES

Subcontracts are between the SM and the subcontractor, and the SM is responsible for resolving subcontract disputes. The SM shall advise the ACO and COTR/ACOTR of disputes, changes in status of disputes, and potential costs or delays in delivery or possible litigation. MARAD will not directly participate in disputes and/or settlement.

MARAD endorses and recommends the use of alternative disputes resolution (ADR) procedures. The SM is responsible for all administrative and legal costs associated with resolving such disputes, except when the government has authorized reimbursement by issuance of a TO. When private counsel has been authorized, the government will reimburse reasonable costs associated with such representation subject to the funding limitations of TO.

Payments of judgments or settlements resulting from this disputes resolution process are the responsibility of the SM, although the SM may request reimbursement provided that indemnification under Section G.7.4.1 does not apply. SM are cautioned to seek prior approval from the ACO of settlements, which the SM intends to submit for reimbursement, in order that a reserve of appropriated funds can be made for the claim. The liability of the United States under this clause is subject to the availability of appropriated funds.

If a dispute is not settled between the SM and the subcontractor and the matter advances to a formal claim in the Courts, Section G.7 Claims and Litigation will apply.

### 3.7 GENERAL SUBCONTRACT POLICIES

3.7.1 Subcontract Basic Content - SM subcontracts shall contain the following information, at a minimum:

- Identification number
- Date of Subcontract Award
- Description of supply/service
- Delivery/performance date
- Place of delivery/performance
- Packing or shipping instructions, if any
- Address to submit invoices
- Terms and Conditions

3.7.2 Flow Down Clauses - The SM shall incorporate appropriate flow-down clauses in subcontracts. Flow-down clauses vary with the type of item, price, and place of purchase. The SM is responsible to select and apply the correct clauses to avoid unnecessary cost to the Government.

3.7.2.1 Commercial Items - In accordance with FAR 44.402, all commercial item purchases shall include the flow-down clauses listed in FAR 52.244-6, Subcontracts for Commercial Items, except for subcontracts obtained outside the United States. Supplies/services ordered by MARAD are considered commercial items unless otherwise stated on the TO.

3.7.2.2 Non Commercial Items - Purchases for supplies and services that do not qualify as commercial items (as determined by the MARAD ACO) shall include all appropriate clauses that flow-down from the SM Contract.

3.7.3 Subcontract terms - The subcontract shall not include any language implying or stating that it is an agent of the Federal Government, and the SM shall not sign as “agent” or “SM for MARAD.” The subcontract shall not include terms that bind the Government to the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor.

3.7.4 Insurance - The SM shall require insurance from subcontractors to protect Government property in an amount appropriate to the subcontract, which shall be determined on a case-by-case basis. Typically, when a vessel is transported to a shipyard facility for a repair availability, MARAD requires the following types of insurance and minimum coverage during the entire performance of the subcontract:

- (1) Workmen's Compensation, including Longshoremen & Harbor Worker's Act coverage - no minimum.
- (2) Employers Liability - \$5 million bodily injury by accident, each accident - \$5 million bodily injury by disease each accident - \$5 million bodily injury by disease in the aggregate.
- (3) Maritime Employers Liability (Jones Act) - \$5 million for each person per occurrence and \$5 million in the aggregate.
- (4) Comprehensive General Liability - \$5 million combined single per occurrence limit for bodily injury and property damage and \$5 million in the aggregate.
- (5) Ship Repairers Legal Liability - \$5 million per vessel, per occurrence.
- (6) Pollution Liability - \$5 Million per occurrence.

The SM shall ensure that indemnification extends to MARAD, and the insurance certificate shall name the United States of America as a secondary source certificate holder as owner, along with the SM as vessel operator. Such policies shall contain a statement that there is no recourse against the USA for payment of premium. The SM shall stipulate that upon request the subcontractor shall provide a copy of all original insurance policies within 5 calendar days. The SM shall ensure that the coverage does not contain exclusions that would effectively negate coverage for all but third party liabilities. All such insurance will contain 30 calendar days advance notice of cancellation or of any non-renewal which is the option of the insurer be provided in writing to the U.S. Department of Transportation, Division of Marine Insurance , MAR-575, Room 8117, 400 Seventh Street, SW, Washington, DC 20590.

The SM shall obtain and review proof of insurance coverage (i.e., certificate of insurance, policy). The ACO may request that the SM send the subcontractor insurance to the MARAD Division of Marine Insurance for review.

3.7.5 Supplemental Material/Lower Tier Subcontract Markup – The SM shall not include a percentage markup (i.e., material handling charge, burden rate) in its subcontracts for supplemental material or lower tier subcontracts. This type of arrangement is considered a Cost-Plus-A-Percentage-Of-Cost type contract, which is prohibited by FAR.

3.7.6 Subcontractor Screening

3.7.6.1 The SM shall verify that no apparent conflict of interest/improper affiliations exist between the SM and subcontractors.

3.7.6.2 The SM shall verify that proposed subcontractors are not suspended and/or debarred by consulting the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-procurement Programs, website at <http://epls.arnet.gov>. If the SM intends to subcontract with a party that is debarred, suspended, or proposed for debarment, notification to the ACO is required in accordance with FAR 9.405-2.

3.7.6.3 SM shall evaluate subcontractor performance to establish qualified sources, and to be used as part of the evaluation of best value. The SM is expected to factor subcontractor past performance into its decision on award. The SM must support decisions not to award based on past performance.